

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TIKTOK INC.,
Petitioner,

v.

CELLSPIN SOFT, INC.,
Patent Owner.

IPR2024-00760
Patent 8,898,260 B2

Before GREGG I. ANDERSON, CYNTHIA M. HARDMAN, and
MICHAEL A. VALEK, *Administrative Patent Judges*.

ANDERSON, *Administrative Patent Judge*.

DECISION
Granting Institution of *Inter Partes* Review
35 U.S.C. § 314

I. INTRODUCTION

A. Background

TikTok, Inc. (“Petitioner”) filed a Petition (Paper 2, “Pet.”) requesting an *inter partes* review of claims 1–18 (“the challenged claims”) of U.S. Patent No. 8,898,260 B2 (Ex. 1001, “the ’260 patent”). Petitioner also filed a Declaration of Dr. Patrick Traynor with the Petition (Ex. 1003, “Traynor Declaration”). Cellspin Soft, Inc. (“Patent Owner”) filed a Preliminary Response. Paper 6 (“Prelim. Resp.”). With our authorization, Petitioner filed a Reply to Patent Owner’s Preliminary Response (Paper 7, “Prelim. Reply”). Although authorized to do so, Patent Owner did not file a preliminary sur-reply.

We have authority to determine whether to institute an *inter partes* review. *See* 35 U.S.C. § 314 (2018); 37 C.F.R. § 42.4(a) (2022). Under 35 U.S.C. § 314(a), we may not authorize an *inter partes* review unless the information in the petition and the preliminary response “shows that there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition.”

Upon consideration of the Petition, the Preliminary Response, and the evidence of record, for the reasons given below we determine there is a reasonable likelihood that Petitioner will prevail in establishing the unpatentability of at least one challenged claim of the ’260 patent. Accordingly, we institute an *inter partes* review of claims 1–18 of the ’260 patent based upon the asserted grounds of unpatentability set forth in the Petition. Pet. 1.

B. Real Parties-in-Interest

Petitioner identifies TikTok Inc., ByteDance Inc., ByteDance, Ltd., ByteDance PTE, Ltd., and TikTok PTE, Ltd. as its real parties-in-interest. Pet. 96. Patent Owner identifies itself as its real party-in-interest. Paper 4, 2.

C. Related Proceedings

The parties identify the following related district court cases involving the '260 patent: *sCellspin Soft, Inc. v. ByteDance, Ltd. et al.*, Case No. 2:23-cv-496 (E.D. Tex.) (“Texas Litigation”) Pet. 96; Paper 4 (“Patent Owner’s Mandatory Notices Pursuant to 37 C.F.R. § 42.8”), 2.

Petitions for *inter partes* review have also been filed by Petitioner challenging other patents owned by Patent Owner including: IPR2024-00767 (U.S. Patent No. 11,659,381), IPR2024-00768 (U.S. Patent No. 11,234,121); IPR2024-00769 (9,900,766); IPR2024-00757 (U.S. Patent No. 8,756,336); IPR2024-00759 (U.S. Patent No. 8,862,757 (“’757 patent¹”)); and IPR2024-00770 (U.S. Patent No. 8,904,030). *See* Pet. 96 (*inter partes* proceeding case numbers added).

Patent Owner further notes that “Unified Patents filed *ex parte* reexamination proceedings” against the '260 patent. Prelim. Resp. 11.

D. The '260 Patent

The '260 patent was filed June 5, 2014, as US 14/297,616 (“’616 application”). Ex. 1001 at codes [21], [22]. The '616 application is a continuation of three applications the earliest of which is US 12/333,303, filed on Dec. 11, 2008, now U.S. Pat. No. 8,392,591. *Id.* at code [63]. A

¹ The '757 patent “shares a specification with the '260 patent.” Pet. 14.

provisional application No. 61/017,202, was filed on December 28, 2007. *Id.* at code [60]. The current record does not show there is any issue about whether the references relied on are prior art.

1. Technical Background

The '260 patent relates generally to distribution of multi-media content and specifically to “pairing a digital data capture device in conjunction with a mobile device for automatically publishing data and multi-media content on one or more websites simultaneously.” Ex. 1001, 1:36–40. The '260 patent explains that prior methods require the user to capture an image using a digital camera or a video camera, store the image on a memory device of the digital, and transfer the image off-line to a computing device, such as a personal computer (PC) using a cable such as a universal serial bus (USB) or a memory stick plugged into the PC. *Id.* at 1:42–49. According to the '260 patent, this process is time consuming and inconvenient. *Id.* at 1:49–50.

2. Method for Automatic Upload of Multimedia Content of the '260 Patent

The '260 patent generally describes “a method and system for utilizing a digital data capture device in conjunction with a Bluetooth (BT) enabled mobile device for publishing data and multimedia content on one or more websites automatically or with minimal user intervention.” Ex. 1001, Abs. In this method, a “client application” on the BT enabled mobile device “detects capture of data and multimedia content on the digital capture device and initiates transfer of the captured data, multimedia content, and

associated files” and “automatically publishes” it by transferring that data to a website. *See id.*

Figure 4 of the '260 patent, reproduced below, depicts an exemplary embodiment.

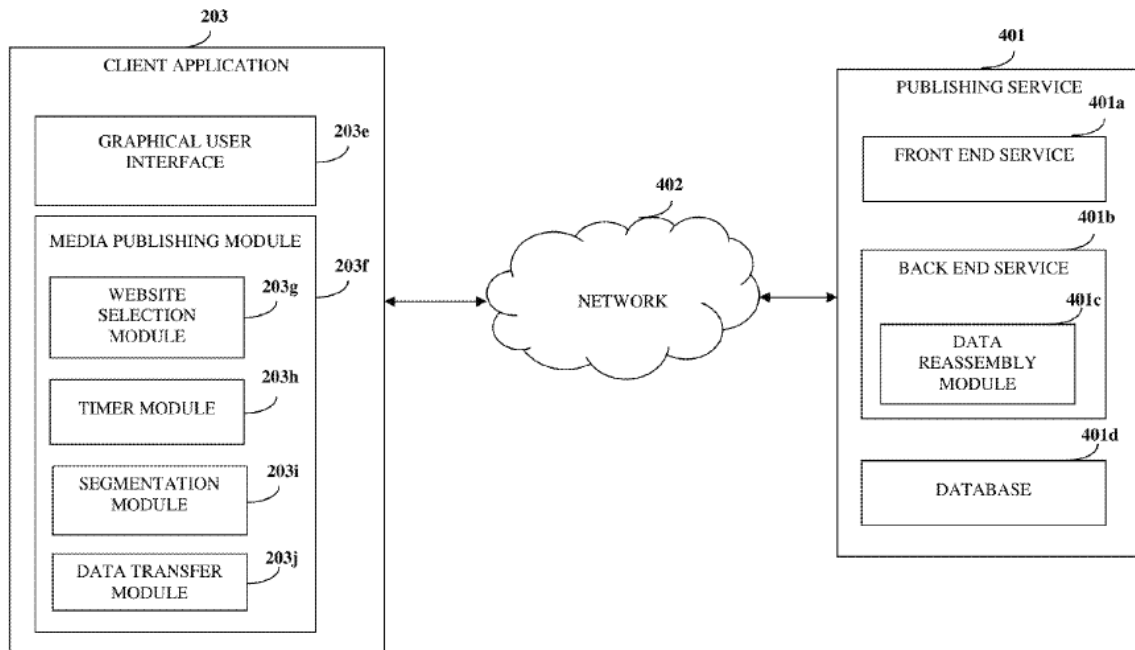


FIG. 4

Figure 4 illustrates a system for publishing data and the multimedia content using a client application on a mobile device on one or more websites simultaneously.

Ex. 1001, 3:19–21. Figure 4 shows client application 203 connected though network 402 to publishing service 401. *Id.* at 7:34–36. The client application comprises several modules including segmentation module 203i and data transfer module 203j. *Id.* at 7:41–43. The '260 patent explains:

In the case of limited memory and processing capabilities of the mobile device . . . the segmentation module 203i of the client application 203 partitions the multimedia content of large files into multiple data segments. The segmentation module 203i generates segment identifiers and tags the data segments with the

segment identifiers. . . . The segment identifiers are used later by a back end service 401b of the publishing service 401 to reassemble the data segments in a predetermined sequence to create a multimedia object. The data transfer module 203j transfers the data, the tagged data segments, and the multimedia content from the client application 203 to the publishing service 401 via network 402.

Ex. 1001, 7:52–65. According to the Specification, the “transport protocol that is used between the client application 203 and the publishing service 401 may be hypertext transfer protocol (HTTP).” *Id.* at 10:4–7.

E. Illustrative Claim

The Petition challenges claims 1–18, of which claims 1, 6, 10, and 15 are independent method claims. Claim 1 is illustrative of the claimed subject matter and reproduced below:

1[pre]² A method of segmented file transfer from a Bluetooth enabled mobile device to a web service, the method comprising:

1[a] providing a software module on the Bluetooth enabled mobile device, the software module, performing;

1[b] determining size of a file to be transferred;

1[c1] segmenting said file into data segments at an application layer level;

1[c2] wherein data in said data segments comprises one or more of said file data and data associated with said file data;

² The brackets define portions of the claim as presented in the Petition. *See* Pet. v–vi (claim 1). Patent Owner adopts the format. *See* Prelim. Resp. 56–57 (limitations 1[e], 1[f], and 1[j]). We adopt the format for purposes of this Decision.

1[d] applying a segment identifier to each of said data segments at the application layer level, wherein the segment identifier corresponds to the content range of said file data that is being transferred in a given data segment;

1[e] applying a user identifier to each of said data segments for the destination web service at the application layer level, wherein said user identifier uniquely identifies a particular user of the web service;

1[f] transferring a data segment along with said user identifier and said segment identifier to the web service,

1[g] receiving a reply message from the web service, corresponding to successful completion of said data segment transfer;

1[h] repeating the step of data segment transfer and the step of receiving the reply message, until all the data segments have been transferred to the web service successfully,

1[i] wherein if segmented file transfer is interrupted, the software module further performs:

1[j] sending, a synchronization request to the web service from the application layer level, corresponding to asking the web service about the segmented file data the web service has successfully received, for said user identifier, after a network connection to the web service is restored;

1[k] receiving, a synchronization reply back from the web service at the application layer level, corresponding to indicate segmented file data said web service has successfully received, for said user identifier; and

1[l] resuming, the segmented file transfer based on the synchronization reply received, for said user identifier;

1[m] receiving, at the web service, all the data segments along with said user identifier and segment identifiers for said file transfer;

1[n] storing, at the web service, the received file data segments and segment identifiers for said user identifier, and

1[o] making available, at the web service, the segmented data received from the Bluetooth enabled mobile device for public or private consumption over the internet.

Pet. v–vi; Ex. 1001, 11:47–12:30.

F. References and Other Evidence

The Petition relies on the following references and declaration:

Aaltonen et al., US 2005/0209927 A1, published Sept. 22, 2005 (Ex. 1005, “Aaltonen”);

Drescher, WO 2008/028508 A1, published Mar. 13, 2008 (Ex. 1010, “Drescher”);

Takahashi, et al., JP 2005-303511, published Oct. 27, 2005 (Ex. 1016, “Takahashi”). Petitioner relies on a certified translation of this Japanese language reference included, along with the original reference, in Exhibit 1016. *See* Ex. 1016, 23–45.

Na, et al., US 2006/0129631 A1, published June 15, 2006 (Ex. 1006, “Na”); and

Lind, et al., WO 2005/109781 A1, published Nov. 17, 2005 (Ex. 1017, “Lind”).

G. Asserted Grounds of Unpatentability

Petitioner asserts the challenged claims are unpatentable on the following grounds:

Grounds	Claims Challenged	35 U.S.C. § ³	References
1	1–18	103	Aaltonen and Drescher
2A	1–18	103	Takahashi and Na
2B	1–18	103	Takahashi, Na, and Lind

Pet. 1.

H. Overview of the Prior Art

The references relied on by Petitioner are described below.

1. Aaltonen (Ex. 1005)

Aaltonen discloses “uploading content” with “greater control over the uploading of content by allowing . . . entities to define instructions to which upload of the media content is subject.” Ex. 1005, Abs. ¶¶ 8–9. Figure 6 of Aaltonen is reproduced below.

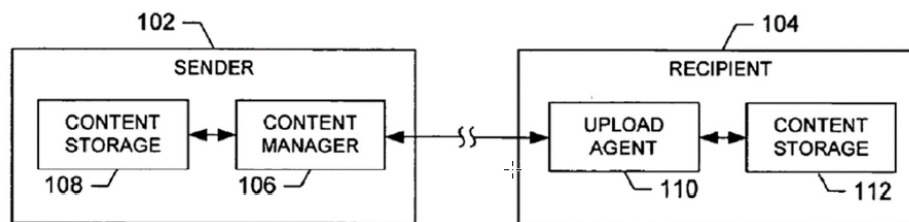


FIG. 6.

Figure 6 is a functional block diagram of a sender uploading content to a recipient.

³ Because the earliest application from which the '260 patent claims priority was filed before March 16, 2013, the pre-AIA (“America Invents Act”) version of § 103 applies. Leahy-Smith America Invents Act (“AIA”), Pub. L. No. 112-29, 125 Stat. 284, 285–88 (2011).

Ex. 1005 ¶ 24. Referencing Figure 6, Aaltonen discloses “recipient,” “sender,” and “network instructions” that “define how content is uploaded to a recipient.” *Id.* ¶¶ 60–61, 63. Aaltonen teaches the instructions break the content into a plurality of portions. *Id.* ¶ 12. Aaltonen’s “content manager 106 or other appropriate application can transcode the upload content whereby the upload content is reformatted so that the size of the upload content can typically be reduced, thereby facilitating fast and efficient uploading of the content.” *Id.* ¶ 69.

Aaltonen uses Hypertext Transfer Protocol (“HTTP”) techniques that divide uploaded content into “a number of content data packets.” Ex. 1005 ¶ 101. “By tracking the number and accuracy of the received packets, the upload agent 110 can identify if, and when, an upload session has experienced an interruption.” *Id.* ¶ 106. The interruption may be signaled to the sender. *Id.* ¶ 107. “Following the interruption, the recipient 104, or more particularly the upload agent 110, can re-establish communication with the sender 102.” *Id.*

“After re-establishing communication with the recipient 104, then, the sender 102 can request the bit-length or size of the portion of the upload content 114 received by the upload agent 110.” Ex. 1005 ¶ 112. “[T]he sender can request, and thereafter receive, the size of the portion of the upload content in accordance with the HTTP HEAD technique,” where the HTTP header information can include a “content-length” header that “specifies the size of the requested content.” *Id.* “Upon receiving the length of the received portion of the upload content, the sender can continue uploading the content to the recipient 104 to complete the uploading

session.” *Id.* ¶ 113. The upload is accomplished using an HTTP POST/PUT technique. *Id.*

2. *Drescher (Ex. 1010)*

Drescher discloses “sending large files or resources over the internet.” Ex. 1010 at code (57), 4⁴:15–30, 5:1–11, 10:14–11:7. Drescher discloses a “HTTP PUT” technique for uploading “chunks” of content where the server sends a “HTTP Response” to the sender’s PUT request that includes “the ’server’s log of progress of processing the PUT Request.” *Id.* at 11:27–12:10, 15:23–16:16. Drescher describes “ParHTTP,” a similar protocol to standard HTTP, for “communicating identities between the client 200 and the server 100.” *Id.* at 9:16–21, 10:1–12, 12:12–20, 25:32–26:21, 34:13–35:4, 35:26–36:21.

3. *Takahashi (Ex. 1016)*

Takahashi discloses a mobile phone that divides image data into a predetermined size and sequentially transmits the divided image data to a server via a network by an HTTP request. Ex. 1016 ¶¶ 5–8, 20–30, 42–43, 49, 57, 80. Takahashi’s mobile phone “adopts a sequential transmission rule for transmitting a divided file one at a time and transmitting the next divided file after waiting for the response of the reception completion” on the server side. *Id.* ¶ 58. The mobile phone repeats transmissions of divided image data until all the image data is transmitted. *Id.* ¶¶ 68, 72, Fig. 8. The server receives the HTTP request from the mobile phone and “combin[es] the

⁴ Page numbers are those on the bottom of the page.

divided image data, if the image data has been divided, to be one image data . . . to be published to a web page.” *Id.* ¶ 61.

4. Na (Ex. 1006)

Na discloses “controlling a media message upload” by exchanging “requests and responses... between a communication terminal and a server.” Ex. 1006, Abs., ¶ 1. Na discloses that the HTTP protocol is used for the media data uploading. *Id.* ¶¶ 52, 62. Na explains that, per the HTTP 1.1 protocol, the media data is segmented; data segments are transmitted in request messages; and “response messages are repeatedly issued . . . for verification of the upload.” *Id.* ¶¶ 3–5.

Na also discloses recovering from an “interruption” such as “an upload error” or “a closed connection” during an upload. Ex. 1006 ¶¶ 54, 70, 84–87, 91–94, 113–115, 139–157, FIGS. 11—12, 24—25. Na’s “FIG. 12 illustrates . . . resuming an upload of media data when the communication connection is reestablished.” *Id.* ¶¶ 36, 91–97. Figure 25 is reproduced below.

FIG. 25

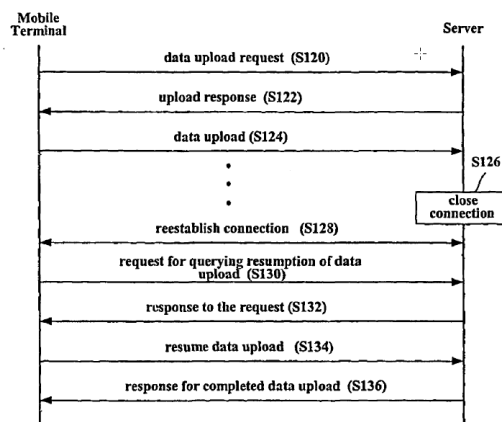


Figure 25 is a flowchart illustrating the procedure for resuming an upload of media data.

Id. ¶ 148. Figure 25 illustrates “resuming an upload of media data stopped by a user.” *Id.* ¶¶ 148–157.

5. *Lind* (Ex. 1017)

Lind describes “electronic devices which are capable of being interconnected . . . by means of Bluetooth.” Ex. 1017, 7⁵:27–29. “Such devices include . . . mobile telephones.” *Id.* at 7:29–8:1. In Lind, “a first electronic device in the form of a mobile telephone, and a second electronic device in the form of a passive accessory, such as a headset or a hands free kit” is “provided with means for communicating by radio, such as a Bluetooth connection.” *Id.* at 8:11–16.

II. DISCRETION UNDER 35 U.S.C. § 314(a)

Patent Owner argues that we should exercise discretion to deny institution in view of the *Fintiv*⁶ factors. *See* Prelim. Resp. 2–19. In particular, Patent Owner contends the Texas Litigation “is already well-developed” and “set for trial on August 4, 2025, which is two months before a Final Written Decision would be due . . . here.” *Id.* at 2–3.

Petitioner does not address each of the *Fintiv* factors, but instead asserts that “institution ***should not*** be discretionarily denied” because it has provided a *Sotera*⁷ stipulation, i.e., Petitioner stipulates “not to pursue in the parallel district court proceeding the same grounds as in the Petition or any

⁵ Page numbers are those on the bottom of the page.

⁶ *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 (Mar. 20, 2020) (precedential) (“*Fintiv*”).

⁷ *Sotera Wireless, Inc. v. Masimo Corp.*, IPR2020-01019, Paper 12, 18–19 (Dec. 1, 2020) (“*Sotera*”).

grounds that could have reasonably been raised in the Petition upon institution.” Pet. 95 (citing Ex. 1026 (stipulation)); *see also* Pet. Prelim. Reply 1 (urging that its *Sotera* stipulation is dispositive and obviates the *Fintiv* analysis here).

In view of Petitioner’s *Sotera* stipulation, we will not exercise discretion to deny institution under 35 U.S.C. § 314(a). The Director has issued guidance stating that, when such a stipulation is presented, the PTAB will not discretionarily deny institution in view of the parallel litigation. Ex. 1023,⁸ 3. That guidance is unequivocal and dispositive of the *Fintiv* analysis here.

Nevertheless, Patent Owner attempts to avoid the Director’s guidance, urging that “a *Sotera* Stipulation will never include art which is ineligible for this IPR, such as product prior art, evidence of a prior sale, or public use.” Prelim. Resp. 10. Patent Owner further contends that Petitioner is “the Real Party in Interest” behind four *ex parte* reexamination requests filed by Unified Patents against some of Patent Owner’s related patents. *See id.* at 11–15. According to Patent Owner, Petitioner has “already run afoul of its *Sotera* Stipulation by evidently driving” these filings. *See id.* at 14–15.

Patent Owner’s arguments are unavailing. It is always the case that IPR is limited to certain grounds and prior art. *See* 35 U.S.C. § 311(b) (limiting the scope of IPR to grounds “under section 102 or 103 and only on

⁸ USPTO Memorandum, Interim Procedure for Discretionary Denials in AIA Post-Grant Proceedings with Parallel District Court Litigation (June 21, 2022), *available at* https://www.uspto.gov/sites/default/files/documents/interim_proc_discretionary_denials_aia_parallel_district_court_litigation_memo_20220621_.pdf.

the basis of prior art consisting of patents or printed publications”). If anything, this demonstrates a lack of overlap between this proceeding and the Texas Litigation—it certainly does not distinguish the Director’s guidance. We also disagree that Petitioner’s alleged involvement in the filing of the reexamination requests Patent Owner identifies runs afoul of its obligations under the *Sotera* stipulation. Petitioner’s obligation not to pursue grounds in parallel proceedings is conditioned on the institution of *inter partes* review. Ex. 1026, 1. Thus, even assuming *arguendo* Petitioner is a real party in interest behind these reexamination requests, Petitioner’s *Sotera* stipulation did not prevent it from participating in the filing of those petitions prior to our decision to institute *inter partes* review here. For these reasons, Patent Owner’s *Fintiv* arguments are unavailing, and we do not exercise discretion to deny the petition in view of the same.

III. PATENT OWNER’S ARGUMENT UNDER 35 U.S.C. 316(b)

In addition to its *Fintiv* arguments, Patent Owner advances a separate theory for discretionary denial under 35 U.S.C. § 316(b). Prelim. Resp. 19–29. That is, Patent Owner contends discretionary denial is warranted to “deter certain types of Petitions” like the one here, which “undermine both the economy and the integrity of the patent system.” *Id.* at 19–20. According to Patent Owner, “[t]he Government is presently executing a preexisting and dynamic policy initiative against the Petitioner and Real Party in Interest (TikTok)” that “implicates foreign policy, national security, and national competitiveness in connection with the technology the Patent Owner accuses of infringement (namely, TikTok’s Data Upload Algorithms)” and instituting *inter partes* review “would transform [the Board] into an instrument that might serve the interests of a company and

nation state that [other parts of the government] have openly condemned as acting against the interests of the United States and its citizens.” *Id.* at 20. For this reason, Patent Owner contends “the enumerated § 316(b) factors weigh strongly against institution, regardless of the merits of the Petition” and “should lead to discretionary denial.” *See id.* at 19–29.

In reply, Petitioner points out that the Petition concerns a Patent Owner’s patent and does not “implicate[] TikTok’s intellectual property, nor . . . ask the Board to take any action concerning TikTok.” Prelim. Reply 2–3. In addition, Petitioner contends that Patent Owner’s argument improperly extends § 316(b) to “considerations of foreign policy and national security” and “would involve an evidentiary review that is not provided for in the IPR procedures.” *Id.* at 3 (internal quotations omitted). According to Petitioner, “[i]t would be improper for the Board to embrace such theories outside of rulemaking after public notice and a comment period have been provided.” *Id.* at 4.

Patent Owner’s argument for discretionary denial under § 316(b) is unavailing. The statute provides that “[i]n prescribing regulations under this section, the Director shall consider the effect of any such regulation on the economy, the integrity of the patent system, the efficient administration of the Office, and the ability of the Office to timely complete proceedings instituted under this chapter.” 35 U.S.C. § 316(b). However, Patent Owner identifies no regulation, rule, or Office guidance that supports its argument here. In the absence of such, we discern no discretion under § 316(b) to deny the Petition based on the policy considerations and concerns Patent Owner alleges.

IV. ANALYSIS OF THE CHALLENGED CLAIMS

A. Level of Ordinary Skill in the Art

Petitioner alleges a person of ordinary skill in the art would have had at least a Bachelor of Science in electrical engineering, computer engineering, computer science, or a related field, with at least two years of relevant work experience in wireless communications and/or networking systems, or equivalents thereof. []. Superior education could compensate for a deficiency in work experience, and vice-versa. [].

Pet. 3–4 (citing Ex. 1003 ¶ 21).

Patent Owner does not propose a level of ordinary skill. *See* Prelim. Resp. Petitioner’s proposal is supported by the testimony of Dr. Traynor and is consistent with the ’260 patent. Accordingly, we apply Petitioner’s articulation.

B. Claim Construction

We interpret claim terms using “the same claim construction standard that would be used to construe the claim in a civil action under 35 U.S.C. 282(b).” 37 C.F.R. § 42.100(b) (2019). In this context, claim terms “are generally given their ordinary and customary meaning” as understood by a person of ordinary skill in the art in question at the time of the invention. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312–13 (Fed. Cir. 2005) (citations omitted) (en banc). “In determining the meaning of the disputed claim limitation, we look principally to the intrinsic evidence of record, examining the claim language itself, the written description, and the prosecution history, if in evidence.” *DePuy Spine, Inc. v. Medtronic Sofamor Danek, Inc.*, 469 F.3d 1005, 1014 (Fed. Cir. 2006) (citing *Phillips*, 415 F.3d at 1312–17). Extrinsic evidence is “less significant than the intrinsic record in

determining ‘the legally operative meaning of claim language.’” *Phillips*, 415 F.3d at 1317 (citations omitted).

Any special definition for a claim term must be set forth in the specification with reasonable clarity, deliberateness, and precision. *In re Paulsen*, 30 F.3d 1475, 1480 (Fed. Cir. 1994).

We construe only those claim terms that require analysis to determine whether to institute *inter partes* review. *See Realtime Data, LLC v. Iancu*, 912 F.3d 1368, 1375 (Fed. Cir. 2019) (“The Board is required to construe ‘only those terms . . . that are in controversy, and only to the extent necessary to resolve the controversy’” (quoting *Vivid Techs., Inc. v. Am. Sci. & Eng’g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999))).

Petitioner does not propose any term for claim construction. *See* Pet. 4. Patent Owner contends that “user identifier” should be construed. Prelim. Resp. 31–35. However, Patent Owner’s Preliminary Response does not argue that construction of the term is in dispute or that Petitioner’s showing is insufficient should Patent Owner’s construction be applied. Regardless, inasmuch as Patent Owner proposes a construction which might be at issue during trial, we construe “user identifier” below.

1. “user identifier” (*independent claims 1, 6, 10, 15*)

The term “user identifier” first appears in limitation 1[e], reciting “applying a *user identifier* to each of said data segments for the destination web service at the application layer level, wherein said *user identifier* uniquely identifies a particular user of the web service.” Patent Owner proposes that “user identifier” means “a text string that identifies uniquely a user of a web service and contains sufficient information to authenticate a

user of the web service.” Prelim. Resp. 35. As support for that construction, Patent Owner cites Figures 2 and 4 and related disclosure in “Non-Provisional Application No. 11/901,802” (Ex. 2009, the “’802 application”), “which is incorporated by reference into the disclosure of the ’260 Patent.” *Id.* at 32–34; Ex. 1001, 1:28–32 (incorporating the ’802 application).

Petitioner argues, in relevant part, that “user identifier” is taught by Aaltonen’s disclosure of “information packets.” Pet. 18 (citing Ex. 1005 ¶ 102). Aaltonen’s “information packets” include “information regarding a number of packets” and “uniquely describ[e] the packets before or after the information packet, as well as one or more identifiers identifying the sender 102.” Ex. 1005 ¶¶ 101–102, 104.

Our starting point is the claim language itself. Both Petitioner’s showing and Patent Owner’s proposal encompass the claim language requiring a user identifier for “each . . . data segment[]” as well as identifying “a particular user of the web service.” Limitation 1[e]. Thus, a distinction between what Petitioner argues as showing “user identifier” and Patent Owner’s proposed construction is “authentication” of the user.

On the current record, Patent Owner’s claim construction arguments are unpersuasive. First, Patent Owner has not shown that the authentication requirement in its construction is supported by the intrinsic record. Patent Owner’s proposed construction requires that the user identifier be a “text string” that “contains sufficient information to authenticate a user of the web service.” Prelim. Resp. 35. Patent Owner’s authentication requirement is not a part of the claim language, nor has Patent Owner attempted to show that a person of ordinary skill in the art would have understood the ordinary meaning of “user identifier” to require such. Authentication does appear in

the '260 patent in the context of BT. Specifically, BT “can cryptographically authenticate the identity of another BT device.” Ex. 1001, 3:61–63. Authentication of the user does not appear in the specification.

The only intrinsic evidence support Patent Owner cites are figures and related disclosure describing a preferred embodiment in the '802 application.⁹ The disclosure uses different terms, e.g., “user preferences” and “login information,” which on this record Patent Owner has not sufficiently connected to the “user identifier” in claim 1. *See* Ex. 2009 ¶¶ 18, 23, 25–26. Even if that connection had been made, the disclosure Patent Owner cites is permissive in nature, stating, e.g., that “user preferences *may* comprise authentication credentials” and not that authentication credentials are required. *Id.* ¶ 23. Thus, on the current record, we decline Patent Owner’s invitation to import an authentication requirement into the claims through the construction of “user identifier.”

Second, even if there was evidentiary support for Patent Owner’s authentication requirement, it is unclear how construing “user identifier” to require such might distinguish the challenged claims from the asserted prior art. In addition to citing Aaltonen for limitation 1[e] in Ground 1, Petitioner cites Drescher’s teachings of HTTP requests that include a name particularizing “the . . . party, involved in the request” and the use of such information to determine whether that user has sufficient “permission” to

⁹ Petitioner argues that the '802 application is not properly incorporated by reference because the '260 patent incorporates the '802 application as opposed to the publication of that application. Prelim. Reply 5 (citing 37 C.F.R. § 1.57 (d)(1)–(3)). We do not reach this argument and assume for purposes of this decision that the disclosure Patent Owner cites is properly incorporated into the '260 patent.

access the alleged web service. *See* Pet. 18 (citing Ex. 1010, 25:4–24, 25:32–26:21, 34:13–25:4, 35:26–36:21).¹⁰ On the preliminary record, this showing appears to teach or suggest a “user identifier” with “authentication” in the form of “permission” even under Patent Owner’s construction. Indeed, at this stage, Patent Owner does not argue otherwise. *See* Prelim. Resp. 40–44 (offering no argument that Patent Owner’s proposed construction distinguishes the combination in Ground 1). Accordingly, even if we were to adopt Patent Owner’s construction, it would not make a difference for our decision to institute.

Third, in addition to reciting a “user identifier,” claim 1 separately recites “wherein said user identifier uniquely identifies a particular user of the web service.” Ex. 1001, 11:64–65. The fact that the surrounding claim language specifies that the “user identifier” must uniquely identify a user “strongly implies” that such a requirement is not required by the term itself. *See, e.g., Phillips v. AWH Corp.*, 415 F.3d 1303, 1314 (Fed. Cir. 2005) (en banc) (explaining that the context in which a claim term is used “can be highly instructive” and the fact that “the claim in this case refers to ‘steel baffles’ . . . strongly implies that the term ‘baffles’ does not inherently mean objects made of steel”); *Digital-Vending Servs. Int’l, LLC v. Univ. of Phoenix, Inc.*, 672 F.3d 1270, 1275 (Fed. Cir. 2012) (“the reference in some claims to a ‘registration server being further characterized in that it is free of content managed by the architecture’ strongly implies that the term

¹⁰ We understand the page number in Petitioner’s pinpoint cites to refer to the page number at the bottom of the page in Exhibit 1010. We do the same for our citations herein.

‘registration server,’ standing alone, does not inherently mean a server that is free of managed content”). Moreover, there is no need to construe “user identifier” to include a requirement that it identify a user of a web service, as in Patent Owner’s proposed construction, because that requirement is apparent from the claim language itself.

For these reasons, we do not adopt Patent Owner’s proposed construction of “user identifier.”

2. Remaining Terms

On this record, none of the remaining “state of the art” terms are in dispute. Unless otherwise indicated in this Decision, we do not need to construe any remaining claim term and apply the plain and ordinary meaning to a person of ordinary skill in the art.

If it becomes disputed, the parties should develop the construction of “user identifier,” or any other term that may require construction, during trial. Failure to do so may result in waiver of the issue for purposes of a final decision.

C. Obviousness

A claim is unpatentable as obvious under 35 U.S.C. § 103(a) if the differences between the claimed subject matter and the prior art are such that the subject matter, as a whole, would have been obvious to a person having ordinary skill in the art to which said subject matter pertains prior to its effective filing date. 35 U.S.C. § 103(a) (2012); *KSR Int’l Co. v. Teleflex Inc.*, 550 U.S. 398, 406 (2007). The question of obviousness is resolved on the basis of underlying factual determinations, including: (1) the scope and content of the prior art; (2) any differences between the claimed subject

matter and the prior art; (3) the level of skill in the art; and (4) where in evidence, so-called “secondary considerations,” including commercial success, long-felt but unsolved needs, failure of others, and unexpected results. *Graham v. John Deere Co.*, 383 U.S. 1, 17–18 (1966). At this stage, neither party has presented any evidence on the fourth *Graham* factor.

D. Claims 1–18 as Obvious Aaltonen and Drescher (Ground 1)

Petitioner provides a limitation-by-limitation analysis that claims 1–18 would have been obvious over Aaltonen and Drescher. Pet. 1, 4–40. Petitioner relies on the Traynor Declaration. Ex. 1003 ¶¶ 27–154.

We do not differentiate the independent claims for purposes of this Decision and consider claim 1 as illustrative. *See* Section I.E above. Patent Owner should consider focusing on any claim language differences between the independent claims during trial.

Patent Owner asserts that Ground 1 fails because Drescher does not qualify as prior art. Prelim. Resp. 40–44. Patent Owner does not argue any limitation of any claim as being absent from Petitioner’s showing. We summarize Petitioner’s showing and whether Drescher is prior art below.

1. Claim 1

Petitioner contends that Aaltonen teaches or suggests a method comprising the limitations of claim 1. *See* Pet. 9–26; Ex. 1003 ¶¶ 39–73. Petitioner relies on Drescher as additional support for certain aspects of limitations 1[e] and 1[g]. Pet. 17, 20–21 (mapping Drescher’s disclosure and citing supporting testimony). More specifically, Petitioner asserts that it would have been obvious to a [person of ordinary skill in the art]

to combine the teachings of Aaltonen and Drescher such that (1) HTTP responses would have been used to acknowledge data blocks that are successfully received by the recipient via Aaltonen's HTTP PUT/POST techniques, based on Drescher, and (2) party-identifying information would have been added to Aaltonen's HTTP PUT/POST messages, based on Drescher.

Id. at 6 (citing Ex. 1010, 14:10–15, 25:32–26:21, 34:13–35:4, 35:26–36:21; Ex. 1005 ¶¶ 12, 16, 28, 69, 93]–94, 96, 101–102, 111, 113, Fig. 10; Ex. 1003 ¶¶ 32, 38).

Regarding its first point in the quotation above, Petitioner contends it would have been obvious to send an acknowledgement “for each block” both to indicate that the block had been “successfully received data” can be “deleted from the sender’s content storage.” *Id.* at 7 (citing Ex. 1005 ¶¶ 93–94, 96, 101; Ex. 1010, 14:10–15; Ex. 1003 ¶ 33). Regarding its second point, Petitioner contends “that adding party-identifying information . . . would improve the security of Aaltonen’s data transfer techniques, as the recipient would be able to identify when a message has been received from a source that does not have ‘permission’ to upload data to the recipient.” *Id.* at 7–8. Petitioner supports these contentions with the Traynor Declaration and other evidence. *See id.* (citing exhibits).

At this stage, Patent Owner does not dispute any aspect of Petitioner’s mapping of the references’ disclosures to the limitations in claim 1, nor Petitioner’s rationale explaining why it would have been obvious to combine them as articulated in Ground 1. Prelim. Resp. 40-44 (arguing only that Drescher does not qualify as prior art). Having reviewed Petitioner’s showing on the current record, we find it sufficient to meet the burden for institution.

We also agree with Petitioner that Drescher qualifies as prior art under 35 U.S.C. § 102(e). Pet. 1. Under the version of section 102(e) applicable here an invention described in a published patent application filed in the United States qualifies as prior art. 35 U.S.C. § 102(e) (2012). However, as Patent Owner acknowledges, the statute further provides that:

an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Prelim. Resp. 41–42 (citing the pre-AIA version of § 102(e)).

Drescher meets these requirements. It is an international application designating the United States that was published in English under the PCT by the World Intellectual Property Organization (WIPO). Ex. 1010, codes (12), (21), (22), (26), (81). Accordingly, Drescher is available as prior art as of its international filing date (i.e., September 7, 2006). MPEP § 901.03 (“[A] WIPO publication of an international application under PCT Article 21(2) [is] considered to be prior art under pre-AIA 35 U.S.C. 102(e) as of the international filing date . . . if the international application was filed on or after November 29, 2000, designated the United States, and was published under PCT Article 21(2) in English.”); *see also EnOcean GmbH v. Face Int’l Corp.*, 742 F.3d 955, 957 n. 3 (Fed. Cir. 2014) (“The Burrow reference is a published PCT application . . . Since the Burrow reference was filed on or after November 29, 2000, designated the United States, and was published in English, it is available as prior art as of its PCT filing

date.”).¹¹ Because Drescher’s international filing date predates the filing date of the earliest application to which the ’260 patent claims priority (i.e., December 28, 2007), on this record Drescher is prior art to the challenged claims.

For these reasons, Petitioner has established a reasonable likelihood it will prevail in demonstrating that claim 1 is unpatentable for the reasons set forth in Ground 1.

2. Claims 2–5

A decision to institute under § 314 may not institute on fewer than all claims challenged in the petition. *SAS Inst., Inc. v. Iancu*, 138 S. Ct. 1348, 1359–60 (2018). In addition, per Board practice, if the Board institutes trial, it will institute “on all of the challenged claims and on all grounds of unpatentability asserted for each claim.” *See* 37 C.F.R. § 42.108(a) (2023). Accordingly, as to this and all remaining grounds we institute *inter partes* review. *See* Section IV.D.1 above.

Notwithstanding the preceding, Petitioner’s showing for dependent claims 2–5 is also sufficient for institution. The Petition presents evidence and argument sufficient to support Petitioner’s assertion that the cited references teach or suggest the additional limitations recited in each of these

¹¹ Patent Owner cites “United States’ Declaration under PCT Article 64(4)(a)” in support of its argument that Drescher is not prior art. *See* Prelim. Resp. 42–43. That declaration dates back to 1978. *Id.* at 43 (stating the declaration “will take effect on May 10, 1978”). It does not reflect the version of § 102(e) applicable here, which includes amendments made effective for international applications filed after November 29, 2000. *See* Pub. L. No. 107–273, §§ 4505, 4508, 116 Stat. 1758.

claims. Pet. 30 (addressing additional limitations in claims 2–5). At this stage, Patent Owner does not make any additional arguments against Petitioner’s showing for these claims.

3. Claims 6–9

Claim 6 is an independent claim from which claims 7–9 depend directly or indirectly. Patent Owner does not separately argue for the patentability of claims 6–9.

Petitioner provides a table comparing limitations from claim 6 corresponding to like limitations of claim 1. Pet. 31–32. Limitations 6[c]–6[g], 6[i]–6[k], and 6[r] do not have any corresponding limitation in claim 1 but are also sufficiently shown in the cited prior art for purposes of institution. Pet. 32–34 (limitations 6[c]–6[g]), 35–36 (limitations 6[i]–6[k]), 36 (limitation 6[r]). Dependent claims 7–9 correspond to claims 3–5 above and the showing is sufficient for purposes of institution as noted above. *Id.* at 31–32 (correspondence table), 30–31 (showing for claims 3–5).

4. Claims 10–14

Claim 10 is an independent claim from which claims 11–14 depend directly or indirectly. Patent Owner does not separately argue for the patentability of claims 10–14.

Petitioner provides a table comparing limitations from claim 10 corresponding to like limitations of claims 1 and 6. Pet. 36–37. Limitation 10[m] is sufficiently shown in corresponding limitation 6[o] which corresponds to limitation 1[m]. Pet. 31 (correspondence table), 28 (limitation 1[m]). Limitations 10[n]–10[o] do not have any corresponding limitation in claim 1 but are also sufficiently shown in the prior art for

purposes of institution. Pet. 37–38. Dependent claims 11–14 correspond to claims 2–5 above and the showing is sufficient for purposes of institution as noted above. *Id.* at 31–32 (correspondence table), 30–31 (showing for claims 2–5).

5. *Claims 15–18*

Claim 15 is an independent claim from which claims 16–18 depend directly or indirectly. Patent Owner does not separately argue for the patentability of claims 15–18.

Petitioner provides a table comparing limitations from claim 10 corresponding to like limitations of claims 1 and 6. Pet. 39–40. Dependent claims 16–18 correspond to claims 3–5 above and the showing is sufficient for purposes of institution as noted above. *Id.* at 40 (correspondence table), 30–31 (showing for claims 3–5).

6. *Summary*

Petitioner has shown a reasonable likelihood that claims 1–18 would have been obvious over Aaltonen and Drescher.

E. Claims 1–18 as Obvious Over Takahashi and Na (Ground 2A) or Takahashi, Na, and Lind (Ground 2B)

Petitioner provides a limitation-by-limitation analysis that claims 1–18 would have been obvious over Takahashi and Na or Takahashi, Na, and Lind. Pet. 1, 40–94. Petitioner relies on the Traynor Declaration. Ex. 1003 ¶¶ 155–346. Lind is cited additionally to expressly show “a Bluetooth enabled mobile device that supported Bluetooth functionalities.” Pet. 46 (citing Ex. 1017, 6:9–10, 8:11–16, 9:12–16, 16:7–8; Ex. 1003 ¶ 168).

As previously noted, having found trial should be instituted on the Aaltonen and Drescher ground, we proceed to trial on all grounds asserted in the Petition. *See* Section IV.D.2 above. In accordance with the Patent Trial and Appeal Board Consolidated Trial Practice Guide November 2019, we provide the following as guidance for the upcoming trial. Ex. 1023, 64.

1. Claims 1, 6, 10, and 15

Patent Owner does not distinguish its arguments as between independent claims 1, 6, 10 and 15. We do not differentiate the independent claims for purposes of this Decision and consider claim 1 as illustrative. *See* Section I.E above. Patent Owner should consider focusing on any claim language differences between the independent claims during trial.

a. Arguments relating to Takahashi and Na's disclosures

Patent Owner first contends Takahashi teaches “the full termination of an upload if the connection is in any way interrupted.” Prelim. Resp. 45 (citing Ex. 1016, Fig. 8 (“ending HTTP transmission in the event of abnormal termination of connection and recognizing necessity of an ‘all data’ single transmission”)). According to Patent Owner, Takahashi has no “synchronization” of messages and the “opposite is expressly required.” *Id.*

The argument implicates limitations 1[i] and 1[j], respectively reciting a “segmented file transfer is interrupted” and then “sending, a synchronization request.” *See* Pet. v–vi. On this record, the argument is not fully developed. For example, there is no explanation of how the claim language, or a proper construction of the claim language, would limit claim 1 to a partial termination and, presumably, a resulting lack of synchronization. In addition, there is insufficient explanation of why a “full

termination” is taught by Takahashi or why a “full termination” would result in failure to send a “synchronization request.”

Patent Owner’s second argument is that “Takashi transmits full 9kb images sequentially and, if upload is interrupted, the entire process ENDS in Takashi.” Prelim. Resp. 46. According to Patent Owner, this deficiency is supported because there is no “User ID” nor, as alleged above, is there any synchronization message in Takahashi. *Id.* Further, Patent Owner argues that if Takahashi teaches a User ID, “such are integrated as part of the upload file name and are not separately associated with individual synchronized data messages.” *Id.* at 46–47.

As was the case with the first argument regarding Takahashi, this argument needs further development. There is little, if any, cited evidence to specific disclosures in Takahashi to support the argument. Patent Owner should specify the specific claim language it alleges is not shown in Takahashi. Further explanation, and potentially expert testimony, should be considered if this argument is to be advanced during trial.

Turning to Na’s disclosures, Patent Owner argues none of Na’s “synchronization messages” contain a “User ID” or a “File name.” Prelim. Resp. 55–56 (citing Ex. 1006, Figs. 2, 6). This argument largely implicates limitation 1[e]. However, Petitioner relies on Takahashi, not Na, for limitation 1[e]. *See* Pet. 57–58 (“Takahashi discloses that ‘a file name of the image data’ contains at least ‘a user ID specific to a user from the server after logging-in’”) (citing Ex. 1016 ¶¶ 10, 13, 32, 35, 64, 66, 70, Fig. 5).

Patent Owner recognizes Petitioner’s reliance on Takahashi for its disclosure of “user identifier” but argues Petitioner is “inconsistent” in doing so. Prelim. Resp. 56. Patent Owner points to different citations to

Takahashi and Na as disclosing the “user identifier” limitation. Patent Owner catalogs Petitioner’s reliance on Takahashi for limitations 1[e] and 1[f]. *Id.* at 56–57. Patent Owner also argues Petitioner’s citation to Na for limitations 1[j] and 1[k] is lacking. *Id.* at 57–61.

As to limitations 1[e] and 1[f] we are not directed to anything that would lead us to determine the limitation is not disclosed by Takahashi’s disclosure of a “user ID.” *See* Prelim. Resp. 56–57.

According to Patent Owner, Petitioner relies on Na to teach limitation 1[j], which recites in relevant part “sending, a synchronization request” after a “network connection to the web service is restored.” Pet. vi., 68–72. Patent Owner argues that the “user identifier” recited in limitation 1[j] is argued by Petitioner as being shown by Na’s “terminal number” or “user agent.” Prelim. Resp. 57–58 (citing Pet. 70–72 (citing Ex. 1006, Figs. 6 (“request message¹²” queries data associated with “terminal number”), 16 (“user-Agent”))).

Patent Owner concludes the “X-Msg-id” of Na does not show a “unique user identifier.” Prelim. Resp. 58. Further, Patent Owner asserts “it was well-known in the art that the ‘User Agents’ as defined by the HTTP protocol were/are *not* unique per user.” *Id.* at 59. These contentions are not supported by evidence on this record and need to be developed at trial.

Limitation 1[k] recites “receiving, a synchronization reply back from the web service at the application layer level, corresponding to indicate segmented file data said web service has successfully received, for said user identifier.” Pet. vi. Petitioner identifies various showings for limitations

¹² The “X-Msg-id” of Takahashi Figure 6. Pet. 69.

including the “user identifier” as well as disclosures from Na. *Id.* at 75 (citing showings for limitations 1[e] and 1[j]; Ex. 1006 ¶¶ 95, 153–155, 119).

Patent Owner’s argument in response cites to the showing regarding “the HTTP ‘User Agent’ of Na . . . ‘for said identifier’ limitation.” Prelim. Resp. 60 (citing Pet. 75). This position is in addition to the assertion by Petitioner that

The response message is “*for said user identifier*” because (1) the response message is directly in response to the request message that is “*for said user identifier*” (supra 1[j]); and (2) the response message itself identifies “the sequence number of the segment from which the upload should be resumed” or “the range of data that has been uploaded already” that are associated with the “user agent information” or user ID (“*said user identifier*”) so as to inform the terminal “where to resume the upload” for the user identifier.

Pet. 75 (citing Ex. 1006 ¶¶ 95, 153–155, 119; Ex. 1003 ¶¶ 234, 236). Patent Owner does not respond to the preceding. We view Petitioner’s additional position as an alternative and additional analysis is unnecessary for purposes of this Decision.

b. Arguments relating to the combination of Takahashi and Na

Patent Owner argues the combination of Takahashi and Na is inoperable because of security issues. *See* Prelim. Resp. 47–51. According to Patent Owner, “HTTP 1.1 advised *against* sending filenames via HTTP” as and the “*only* way to send uploaded file names via HTTP messages was by using ‘Content Disposition,’ which [was] . . . ‘plainly disfavored . . .

because of security risks.” *Id.* at 48 (quoting Ex. 2012¹³, 154). For this reason, Patent Owner contends a person of ordinary skill in the art “would not have been inclined to combine the known insecurity of embedding the user-name within the file name” as taught by Takahashi with the teachings in Na. *See id.* at 48–51. On the current record, Patent Owner’s argument is not well-founded because it is insufficiently explained and seemingly contradicted by the same HTTP protocol document Patent Owner relies upon. *See* Ex. 2012, 154 (explaining that despite security concerns, the Content-Disposition header in HTTP “is widely implemented”). Moreover, none of the independent claims appear to recite security as a limitation. Thus, the fact that the asserted combination may present security concerns does not, in and of itself, demonstrate that combination is inoperable. *See Axonics, Inc. v. Medtronic, Inc.*, 73 F.4th 950, 957 (Fed. Cir. 2023) (“The inquiry [for obviousness] is not whether a relevant artisan would combine a first reference’s feature with a second reference’s feature to meet requirements of the first reference *that are not requirements of the claims at issue.*”) (emphasis added).

Patent Owner further contends the teachings of Takahashi and Na are incompatible because Na is “plainly directed to phone MMS (Multimedia Messaging Service) technologies for the uploading of messages that are different from phone SMS messages.” Prelim. Resp. 51. To this end, Patent Owner argues there are differences in the relevant architectures such that the “proposed combination of Takahashi and Na would not have performed properly.” *Id.* at 52–55 (urging that in MMS “there is no available field for

¹³ RFC 2616–Hypertext Transfer Protocol, HTTP/1.1, June 1999.

‘Filename,’” and “Petitioner fails to expand upon precisely *how* a [person of ordinary skill in the art] would combine the two disparate message (MMS versus Web) formats when their respective header and message bodies are incompatible”). Relatedly, Patent Owner contends “there is no ‘User ID’ or even a ‘File name’ in Na” and the attributes Petitioner cites in Na (i.e., X-msg-id, terminal number, and user agent information) do not uniquely identify a particular user. *See id.* at 55–60.

On the current record, Patent Owner’s arguments are unavailing to the extent they misapprehend the asserted combination of Takahashi and Na. The Petition relies on Takahashi’s disclosure of a user ID as the unique identifier recited in element 1[e]. Pet. 57. Petitioner asserts that it would have been obvious to apply Takahashi’s file name including the user ID (“*user identifier*”) to each divided image data (“*data segment*”). *Id.* One way to meet the limitation is alleged to include Na’s teaching that “a request message that includes the user ID for each divided image data “(‘segment’) to be uploaded ‘(*applying a user identifier to each data segment*’).” *Id.* at 58 (citing Ex. 1006 ¶¶ 53, 62–63, 78, 116–117, Figs. 2, 15). Thus, even assuming Na is primarily directed to MMS and MMS lacks a file name, the combination in Grounds 2A–B is not premised on the incorporation of Takahashi’s file name into the MMS format, but rather modifying Takahashi based on concepts taught in Na. Moreover, the Federal Circuit has explained that the test for obviousness is not whether teachings can be bodily incorporated from one reference to the other. *See Axonics*, 73 F.4th at 957 (“[A] skilled artisan may be motivated to combine particular features of different references, e.g., to secure some benefits at the expense of others, even when bodily incorporation would be impossible or inadvisable.”); *Intel*

Corp. v. PACT XPP Schweiz AG, 2023 WL 2198649, *3 (Fed. Cir. Feb. 24, 2023) (explaining the Board erred by requiring evidence that a mechanism in one reference could be “bodily incorporated” into the system in the other reference).

2. Dependent Claims 2–7, 7–9, 11–14, 16–18

The Petition presents evidence and argument, including tables of correspondence between various claims discussed above, sufficient for purposes of institution to support Petitioner’s assertion that the cited references teach or suggest the additional limitations recited in dependent claims 2–7, 7–9, 11–14, and 16–18. Pet. 82–84 (claims 2–5), 84–85 (table of claims 7–9 as corresponding to claims 3–5), 90 (table of claims 11–14 as corresponding to claims 2–5), 94 (table of claims 16–18 as corresponding to claims 3–5). At this stage, Patent Owner does not make any additional arguments against Petitioner’s showing for these claims.

3. Summary

Petitioner has shown a reasonable likelihood that claims 1–18 would have been obvious over Takahashi and Na or Takahashi, Na, and Lind.

V. CONCLUSION

For the foregoing reasons, we have determined that there is a reasonable likelihood that Petitioner would prevail with respect to at least one of the claims challenged in the Petition. We therefore institute trial as to all challenged claims on all grounds stated in the Petition.

VI. ORDER

For the foregoing reasons, it is

ORDERED that pursuant to 35 U.S.C. § 314(a), an *inter partes* review of the '260 patent is hereby instituted for all of the challenged claims on all of the asserted grounds; and

FURTHER ORDERED that pursuant to 35 U.S.C. § 314(c) and 37 C.F.R. § 42.4, notice is hereby given of the institution of a trial; the trial will commence on the entry date of this Decision.

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